

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

COMFORT RESEARCH, LLC,

Plaintiff,

v.

ACE BAYOU CORPORATION,

Defendant.

Case No:

Judge:

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, COMFORT RESEARCH, LLC ("PLAINTIFF" or "COMFORT RESEARCH"), by and through its undersigned counsel, for its Complaint against Defendant, ACE BAYOU CORPORATION ("DEFENDANT" or "ACE") states the following. Allegations made on information and belief are premised on the belief that the same are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

NATURE OF THE CASE

1. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. §1, *et seq.* ("Federal Patent Act").

2. This is also an action for copyright infringement under the Federal Copyright Act of 1976, as amended, 17 U.S.C. §101, *et seq.* ("Federal Copyright Act").

3. ACE, manufactures, offers to sell, and sells, without authorization, either express or implied, from COMFORT RESEARCH, a frameless chair in direct violation of The Federal Patent Act and The Federal Copyright Act – among others.

4. COMFORT RESEARCH seeks injunctive and monetary relief to the fullest extent possible under The Federal Patent Act, The Federal Copyright Act, as well as any such other relief as the equities of the case may require and as this Court may deem just and proper.

PARTIES

5. COMFORT RESEARCH, LLC is a Michigan limited liability company having a principal place of business at 1719 Elizabeth Avenue NW, Grand Rapids, Michigan 49504.

6. Upon information and belief ACE BAYOU CORPORATION is a corporation organized under the laws of Louisiana, having a principal place of business at 3700 Desire Parkway, New Orleans, Louisiana 70126.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the subject matter by virtue of at least one of 28 U.S.C. §§1331, 1338(a), and 1338(b).

8. This Court has personal jurisdiction over ACE, and venue is proper in this judicial district pursuant to at least one of 28 U.S.C. §§1391(b)(2), 1391(c), 1400(a), and 1400(b). Upon information and belief ACE is actively doing business in this judicial district, and/or has committed certain acts of patent infringement and copyright infringement in this judicial district. ACE makes, distributes, offers for sale, and/or sells frameless chairs in the State of Michigan. ACE is subject to the personal jurisdiction of

this Court and is amenable to service of process pursuant to the Michigan long-arm statute, MI ST 600.705 (2003), and Fed. R. Civ. P. 4(e). Requiring ACE to respond to this action will not violate due process.

BACKGROUND

9. COMFORT RESEARCH is, among other things, a world leader in the innovation, design, and manufacture of frameless furniture. COMFORT RESEARCH manufactures, distributes, and sells its frameless beanbag chairs, loungers, loveseats, and pet beds to companies and end users around the world.

10. COMFORT RESEARCH is actively philanthropic both locally and nationally – donating thousands of chairs, as well as proceeds from the sales of chairs, to organizations such as Grand Rapids Urban Oasis, The Wounded Warrior Project, Sunshine on a Ranney Day, the Children's Hospital of Los Angeles, and East Jefferson YMCA of New Orleans – just to name a few.

11. Prior to May 8, 2014, Daniel C. George II and Matthew Jung conceived of a new frameless chair that is now known as the Milano Chair.

12. On October 28, 2014, the United States Patent and Trademark Office duly and legally issued U.S. Design Patent No. D716,064 S ("the '064 patent"), entitled "Milano Chair" to Daniel C. George II and Matthew Jung. (See Exhibit A.)

13. All rights in the '064 patent have been assigned to Comfort Research, LLC.

14. Comfort Research, LLC is the sole owner of the '064 patent and has the right to enforce and recover damages for infringement of the '064 patent.

15. The United States Copyright Office also duly and legally issued U.S. Registration No. VA 1-933-980 ("the '980 registration"), entitled "Big Joe Milano" to Comfort Research, LLC.

16. In an improper attempt to unlawfully profit from the goodwill and charitable missions of COMFORT RESEARCH, ACE has begun selling a frameless chair that infringes COMFORT RESEARCH's intellectual property associated with its now famous Big Joe Milano Chair in direct violation of The Federal Patent Act, and The Federal Copyright Act – among others.

COUNT I – PATENT INFRINGEMENT OF

U.S. DESIGN PATENT NO. D716,064 BY ACE

17. Plaintiff restates and incorporates by reference herein paragraphs 1-16.

18. ACE makes or has made, uses, offers to sell and/or sells one or more frameless chairs (*e.g.*, the chairs sold at Walmart Stores, Inc. having the UPC code 094338979725 from lot number 20140625C) which infringe upon one or more claims of the '064 patent in this judicial district and elsewhere in the United States in violation of 35 U.S.C. §271.

19. Infringement of the '064 patent by ACE has caused, and will continue to cause, COMFORT RESEARCH to suffer damages, including, but not limited to, lost sales, lost profits, lost royalties and/or price erosion in an amount to be determined by the trier of fact.

20. Furthermore, the recent recall of nearly 2.2 million of ACE's chairs due the death of two children from the lack of a permanent zipper closure, causes further harm to COMFORT RESEARCH as there have been multiple occasions where confused

consumers contact COMFORT RESEARCH asking about the recall because of the confusingly similar frameless chairs sold by ACE.

21. Unless restrained and enjoined by this Court, ACE will continue to infringe the '064 patent, resulting in substantial, continuing and irreparable damages to COMFORT RESEARCH.

22. The actions of ACE are "exceptional" within the meaning of 35 U.S.C. §285.

COUNT II – COPYRIGHT INFRINGEMENT OF
U.S. REGISTRATION NO. VA 1-933-980 BY ACE

23. Plaintiff restates and incorporates by reference herein paragraphs 1-22.

24. COMFORT RESEARCH is a business which, among other things, designs and manufactures innovative and distinct frameless chairs.

25. Each new line of COMFORT RESEARCH's chairs and its associated photographs are original works subject to copyright protection under United States Law.

26. At least as early as May 8, 2014, COMFORT RESEARCH designed, photographed, and implemented the Big Joe Milano chair.

27. COMFORT RESEARCH is the owner of all right, title, and interest in and copyrights to U.S. Registration No. VA 1-933-980 (Big Joe Milano).

28. Big Joe Milano comprises an original work of authorship fixed in a tangible medium of expression within the meaning of the Copyright Act of 1976 17 U.S.C. §101 *et seq.*, as amended. Therefore, it constitutes copyrightable subject matter under the laws of the United States.

29. COMFORT RESEARCH believes, and therefore alleges, that ACE has knowingly and willfully copied and continues to copy the Big Joe Milano.

30. COMFORT RESEARCH believes, and therefore alleges, that ACE has sold and continues to sell substantial quantities of chairs continuing to copy from COMFORT RESEARCH.

31. As a direct and proximate result of the ACE's acts of infringement, COMFORT RESEARCH has suffered and will continue to suffer, irreparable injury.

32. The DEFENDANT's conduct is causing and, unless enjoined and permanently restrained by this Court, will continue to cause COMFORT RESEARCH great and irreparable injury that cannot be fully compensated or measured in money. COMFORT RESEARCH has no adequate remedy at law.

33. COMFORT RESEARCH is entitled to recover all damages suffered as a result of the ACE's wrongful acts, including but not limited to profits obtained by the DEFENDANT as a result of their wrongful acts and the loss of profits sustained by COMFORT RESEARCH. In the alternative, COMFORT RESEARCH is entitled to recover statutory damages in an amount to be determined by the Court. COMFORT RESEARCH is also entitled to recover all reasonable attorney's fees, court costs and interest on said damages from the date of DEFENDANT's infringement.

PRAYER FOR RELIEF

WHEREFORE COMFORT RESEARCH respectfully demands judgment against ACE as follows:

- A. Declaring that ACE has infringed the '064 patent;
- B. Pursuant to 35 U.S.C. §283, permanently enjoining and restraining ACE and its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from further acts of infringement of the '064 patent;
- C. Pursuant to 35 U.S.C. §284, awarding to COMFORT RESEARCH damages, including lost profits, together with prejudgment interest, post judgment interest, and costs, adequate to compensate COMFORT RESEARCH for ACE's acts of infringement of the '064 patent;
- D. Declaring that ACE's infringement has been willful and this is an exceptional case pursuant to 35 U.S.C. §285 and awarding COMFORT RESEARCH treble damages and reasonable attorneys' fees against ACE for infringement of the '064 patent;
- E. Declaring that ACE has infringed one or more copyrights of COMFORT RESEARCH;
- F. Preliminarily and permanently restrain and enjoin ACE from further infringement of COMFORT RESEARCH's copyright;
- G. Order the impoundment and destruction of all infringing works;
- H. Order ACE to pay damages adequate to compensate COMFORT RESEARCH for the acts of copyright infringement by ACE and ACE's profits from its sales of goods in violation of the law as described in this Complaint;

I. Order ACE to pay statutory damages, pursuant to 17 U.S.C. §504 for willful infringement;

J. Order ACE to pay COMFORT RESEARCH's expenses, interest, and costs including reasonable attorney's fees, pursuant 17 U.S.C. §505;

K. Declaring that ACE has infringed at least one of the patent, and copyright of COMFORT RESEARCH;

L. Preliminarily and permanently restrain and enjoin ACE from further infringement of COMFORT RESEARCH's patent and copyright;

M. Order ACE to pay damages adequate to compensate COMFORT RESEARCH for the acts of patent and/or copyright infringement by ACE and ACE's profits from its sales of goods in violation of the law as described in this Complaint;

N. Order ACE to pay all applicable statutory damages including exceptional and/or treble damages;

O. Order ACE to pay COMFORT RESEARCH's expenses, interest, and costs including reasonable attorney's fees;

P. Order ACE to pay COMFORT RESEARCH for rehabilitative advertising and price point restoration; and

Q. Awarding COMFORT RESEARCH such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

COMFORT RESEARCH, LLC respectfully demands a trial by jury on all issues so triable.

Respectfully submitted,

COMFORT RESEARCH, LLC

Dated: December 9, 2014

/William L. King III/

By: One of the Attorneys for Plaintiff

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